

KYRUS CAMP LOGGING,)	AGBCA No. 2002-115-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Kyrus Camp)	
14262 County Road 66)	
Heflin, Alabama 36264)	
)	
Representing the Government:)	
)	
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Office of the General Counsel)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

June 25, 2002

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises out of Kyrus Camp Logging's (Appellant's) Compartment 21 & 30, - DD #2 Timber Sale Contract # 05-013756, on the Talladega National Forest, Alabama, between it and the U. S. Department of Agriculture, Forest Service (FS). The appeal dated January 3, 2002 (but not received until later due to Government mail problems), challenges a FS claim for (1) failure to pay a bill of collection in the sum of \$174.38, for damage to the residual stand in Payment Unit #3 of the contract and (2) failure to pay a bill of collection for \$31,469.65 for liquidated damages for allegedly willful cutting down of sawtimber in lieu of roundwood, and \$23,956.75 for the difference in contract rate value between pine sawtimber that was cut in lieu of the roundwood. The matter was initially addressed in a Contracting Officer's (CO's) decision of March 5, 2001, issued out of the FS, Southern Region, Atlanta, Georgia, and later addressed in a letter dated October 30, 2001, signed by the same CO. The October 2001 letter was identified as a review conducted under the Debt Collection Act. In that letter, the CO specifically stated that the letter did not represent a new CO's final decision.

Within a week after receiving the appeal, the Board held a telephone conference with Mr. Camp, pro se, and with FS counsel. In that conference the Board brought to the attention of the parties, concerns the Board had regarding the timeliness of the appeal. Given that Mr. Camp was pro se, the Board considered raising the issue of timeliness to be especially warranted, particularly in light of the fact that Appellant's time to file an appeal at the Court of Federal Claims had not yet run but was fast approaching. The Board provided the parties with a brief legal analysis, pointing out to Mr. Camp that the Contract Disputes Act requires that an appeal to the Board be filed within 90 days of receipt of the CO's decision by the contractor. The Board continued that there are some circumstances where an appeal filed after 90 days will be timely, however, whether Camp's appeal would fit within one of those circumstances would be a matter that would prudently require Appellant to secure advice of legal counsel. Even then, Appellant would run a risk of possible untimeliness, not only at the Board, but also as to the Court of Federal Claims. The Board then discussed the procedure for appealing to the Court of Federal Claims, should Appellant decide to go that route.

Soon after the conference, the Board was advised that Appellant had filed an appeal, Docket No. 02-CV-150, at the United States Court of Federal Claims. Neither party has subsequently requested the Board to take any further action on this appeal. Accordingly, the Board dismisses the appeal from its docket.

DECISION

The appeal is dismissed.

HOWARD A. POLLACK
Administrative Judge

Concurring:

JOSEPH A. VERGILIO
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
June 25, 2002